IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL

Writ Petition No. 966 (SS) of 2001

Pitamber Dutt Kothari,
S/o late Sri Nandji Kothari,
R/o Village- Kothiyara, Patti – Lasya,
Tehsil – Deo Prayag,
District – Rudra Prayag. ……..Petitioner

Versus

1. State of Uttarakhand through its Secretary, Public Works Department, District- Dehradun.
2. Executive Engineer, (Temporary Division), Public Works Department, Ghansali, District- Tehri Garhwal.
3. Executive Engineer, (Temporary Division), Public Works Department, Kirti Nagar, District- Tehri Garhwal.

…….Respondents

Hon'ble M.M. Ghildiyal, J

Heard Sir Rakesh Thapliyal, learned counsel for the petitioner and Sri N.P. Shah, learned Standing Counsel for the respondents.

By means of this writ petition, the petitioner has prayed for the following reliefs:

i. a writ, order or direction in the nature of Mandamus directing the respondents to treat the petitioner's date of birth as 10.05.1943 and the same may be directed to be rectified in the service book of the petitioner.

ii. a writ, order or direction in the nature of Mandamus directing the respondents that after treating the petitioner's date of birth as 10.05.1943, all post

retiremental benefits along with the pension may be given to the petitioner within a specified period.

iii. *a writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case.*

iv. *Award costs to the petitioner.*

The stand of the petitioner is that petitioner was engaged on 01.10.1977 as daily wager with the respondent department. Later on, his services were regularized with effect from 15.12.1990 and petitioner was retired from service with effect from 31.05.2000. Since petitioner could not complete 10 years qualifying service to get pensionery benefit, he approached this Court by way of filing present writ petition stating therein that the correct date of birth of the petitioner was 10.05.1943 whereas he has been retired from service treating his date of birth as 10.05.1942, as a result of which he has been deprived to get pensionery benefit as he has not qualified 10 years regular service which is required to get pensionery benefits.

It is not in dispute that petitioner was retired on 31.05.2000 whereas writ petition has been filed by him after about one year of his retirement. It is well settled law that incumbent may approach the department for correction of date of birth, as soon as he gets knowledge that his date of birth has wrongly been entered into service book. It is also well settled law that correction in the date of birth cannot be applied at the fag end of service.

In the present case, petitioner has applied for correction in date of birth after about one year of his retirement.

From perusal of Annexure no. 3 of the writ petition it is clear that services of the petitioner were regularized with effect from 15.12.1990 and he was retired from service on 31.05.2000. Now, this Court cannot direct the respondents to correct the date of birth of the petitioner, as the petitioner has approached this Court after expiry of one year of his retirement.

Learned counsel for the petitioner has submitted that he may be permitted to make representation before the Competent Authority to consider the case of the petitioner for pensionary benefit by relaxing shortage of service which is about 6 months.

Learned counsel for the petitioner could not show any law in his favour, under which respondents can exercise the power to relax shortage of service for the purpose of granting pensionery benefit. In any case, if there is any provision petitioner may approach the respondent authority and the respondent authority may take decision in accordance with law.

With this direction, writ petition as well as all the pending applications are disposed of. No order as to costs.

(M.M. Ghildiyal, J)

November 5, 2007
SKS